IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 6679 (SS) of 2001
(Old No. 18773 of 1993)

Savita Prasad Nautiyal **……Petitioner.**

Versus

Managing Director. **……Respondents**

Approved for reporting

Not approved for reporting

Date of Decision: May 29, 2007

Initial of Judge

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 6679 (SS) of 2001
(Old No. 18773 of 1993)

Savita Prasad Nautiyal,
S/o Sri B. Nautiyal,
Inspector Quality Control,
Garhwal Scheduled Tribe
Development Corporation Ltd.,
65 D, Rajpur Road, Dehradun… **……Petitioner.**

Versus

Managing Director,
Garhwal Anusuchit Janjati
Vikas Nigam Ltd., 65 D,
Rajpur Road, District-Dehradun. **..……..Respondents**

Hon'ble M.M. Ghildiyal, J.

Heard Sri C.D. Bhauguna, learned counsel for the petitioner and Sri D.S. Mehta, learned counsel for the respondent.

Learned counsel for both the parties are agree to decide the writ petition at its admission stage itself.

By means of this writ petition, the petitioner has prayed for the following reliefs:

a. *Issue a writ order or direction in the nature of Certiorari quashing the order of removal dated 23.02.1993 and suspension order dated 12.12.1991 (Annexure no. 7 and 1 to this writ petition.)*
b. *Issue a writ, order or direction in the nature of Mandamus directing the respondents to treat the petitioner in continuous service and give salary and all other consequential benefits of service with effect from 12.12.1991, the date of suspension.*

c. *Grant any other and further relief as this Hon'ble Court may deem fit and proper in the facts and circumstances.*

d. *Award the cost of the petition.*

Petitioner, who was appointed as Quality Control Inspector in Garhwal Anusuchit Janjati Vikal Nigam Ltd., was placed under suspension vide order dated 12.12.1991 passed by respondent and thereafter, was removed from service vide order dated 23.02.1993 after holding departmental proceedings against the petitioner for the charges levelled against him.

Petitioner was permanent employee of respondent and at the relevant time was working as Quality Control Inspector in Garhwal Anusuchit Janjati Vikas Nigam Ltd., Dehradun. He was suspended vide order dated 12.12.1991. The relevant extract of the suspension order as under:

''श्री सविता प्रसाद नौटियाल, क्वालिटी कन्ट्रोल निरीक्षक मुख्यालय को दायित्वों के प्रति लापरवाही बरतने के आरोप में तात्कालिक प्रभाव सें निगम की सेंवाओं से अग्रिम आदेषों तक निलम्बित किया जाता है ।''

Charges were framed against petitioner by the Production Superintendent and chargesheet containing three charges was furnished to the petitioner. Sri O.P. Bhatt, Production Superintendent was appointed as Inquiry Officer. The inquiry was conducted by the Inquiry Officer without following the procedure prescribed under law and submitted his report to the Disciplinary Authority on 05.11.1992 Thereafter, Disciplinary Authority on 14.12.1992 issued a notice to the petitioner to file objection, if any, to which petitioner has submitted his reply. However, the Disciplinary Authority, without considering the facts that the inquiry has not been

conducted in a fair manner, has removed the petitioner from service.

Petitioner has attacked the suspension order as well as order of dismissal on various grounds. First, suspension order does not disclose the charges. It is well settled law that it is not necessary to disclose the charges, in detail, in the suspension order. The charges are disclosed in the charge-sheet, however, while passing the suspension order the ground on the basis of which suspension order is being passed should be disclosed though not in detail.

From perusal of the suspension order, it appears to me that the same is vague. Further, though the employer has power to suspend the employee for the charges but at the same time suspension order should not be passed in mechanical way. Technically, suspension is not a punishment but in another way it is more than a punishment for a person because it effects the reputation of the employee, which certainly effect him adversely, as such, suspension order should be passed only in those cases where the charges are of so serious in nature that after holding inquiry, if the charges are proved the delinquent may be awarded major penalty. Second, the suspension order should be passed only when the authority comes to the conclusion that fair inquiry cannot be concluded against the delinquent without suspending him / her from service otherwise he / she will distort the evidence and in case, the inquiry can be conducted by transferring the delinquent, suspension order in these circumstances is not required.

In any case, since after suspension of the petitioner inquiry was conducted against the petitioner. order of

suspension now merged with the order of removal, as such, no order is required to be passed on the question of suspension.

So far as the order of removal is concerned after holding inquiry, there is limited scope before the court to interfere with the order. The order passed by Disciplinary Authority after holing inquiry can be interfered by the court, in case, the inquiry has not been conducted after following due process of law prescribed under the existing laws, proper opportunity was not given to the delinquent and where the punishment awarded to the delinquent is disproportionate to the gravity of the charges. On the question of quantum of punishment, though the court is not sitting in the appeal, yet can interfere, if the punishment awarded to the delinquent is shocking.

In the present case, I have perused the inquiry report as well as the punishment order passed by the respondent and found that the Inquiry Officer has acted as prosecution witness and finding recorded by him is based on his memory in absence of prosecution witness in respect of charge no. 1. The finding recorded by the Inquiry Officer is quoted as under:

''मैने इस प्रकरण की पूरी जॉच की और पाया की श्री नौटियाल को वास्तव में कार्यालय द्वारा ऐसा कोई लिखित आदेश नही दिया गया था कि वे स्थाई रूप से ऐंदी में प्रवास करे, किन्तु मुझे अच्छी तरह याद है कि जब श्री नौटियाल दिनांक 27.11.91 को ऐंदी के लिये प्रस्थान कर रहे थे तो प्रधान प्रबन्धक महोदय, नें तब तक श्री नौटियाल को वही रूकने के निर्देश दिये थे जब तक अधोहस्ताक्षरी ऐदी न पहॅुच जाये किन्तु मैं जब दिनांक 09.12.91 को ऐंदी पहॅुचा तो वे उससे पहलें देहरादून के लिये चल चुके थे ।''

The charge was that the Managing Director has asked the petitioner to proceed for Aendi and will remain there. However, he left Aendi and came back to Head Office, Dehradun where he was actually posted. In reply to this

charge, petitioner has submitted that there was no written order to petitioner to this effect, however, he was asked to go to Aendi along with necessary medicines which he complied and after providing necessary medicines to the persons concerned in the Project at Aendi, he returned to Dehradun.

From perusal of record, it appears that the directions were issued by the Managing Director at the Railway Station. It is also admitted by the Inquiry Officer that there was huge noise at Railway Station and it was quite possible due to huge noise petitioner could not have heard the direction issued by the Managing Director in the manner in which it was given. In spite of these findings, the Inquiry Officer has recorded that he remember that the delinquent was directed by Managing Director to go to Aendi and remain there.

Three charges have been levelled against the petitioner and all the three charges related to the direction issued by the Managing Director to the petitioner and information supply by the petitioner to the Managing Director at the Railway Station. It is clear, from the perusal of record and also from the finding recorded by the Inquiry Officer as well as Disciplinary Authority that no written order was passed and in spite of these findings, petitioner has been removed from the service.

In my opinion, Inquiry Officer should not be witness or a person entrusted in the matter. A witness cannot become Inquiry Officer. Further when the Inquiry Officer has recorded a finding that a direction were issued at the Railway station orally by the Managing Director where a huge noise was there and it was possible for the petitioner not to be able to hear the

directions in the manner in which they have been given by the Managing Director.

The court comes to the conclusion that the punishment awarded to the petitioner, who was a permanent employee, for removing him from the service, is shocking. He could have been awarded lesser punishment proportionate to the gravity of charges levelled against him

For the reasons recorded above, I find it fit and proper to direct the respondent to pass fresh order after affording opportunity of hearing to the petitioner, in view of observation made above within a period of three months from the date of production of certified copy of this order.

In case, respondent comes to the conclusion, after giving opportunity of hearing and going through the charges, that punishment awarded to the petitioner is disproportionate and award him lesser punishment, while passing the order respondent shall take into consideration the fact that the petitioner has not served the department since 1993.

Writ petition is allowed. Order dated 23.02.1993 passed by respondent is quashed. All the pending applications stand disposed of accordingly. No order as to costs.

(M.M. Ghildiyal, J)

May 29, 2007
SKSHARMA